
	<h2 style="margin: 0;">CHIEF OF DETECTIVES MEMO</h2>	
NUMBER: 31	DATE: November 7, 2011	

Subject: **DETECTIVE BUREAU PILOT PROGRAM: LINEUP IDENTIFICATION PROCEDURE**

Chief of Detectives Memo #17 series 2011, dated June 27, 2011 is **REVOKED**.

The following 64 Detective Squads are participating in the lineup identification procedure pilot project:

- **DBM** – 1st, 9th, 17th, 23rd, 24th and 33rd Detective Squads.
- **DBBX** – all Detective Squads.
- **DBB** – Kings County District Attorney's Office Squad, 72nd, 76th, 77th, 78th, 84th and 88th Detective Squads.
- **DBQ** – Queens County District Attorney's Office Squad, 100th, 102nd, 105th, 107th, 109th, 110th, 111th and 114th Detective Squads.
- **DBSI** – all Detective Squads.
- **CRD** – all Detective Squads.
- **SID** – all Detective Squads.
- **SVD** – Special Victims Squad Bronx and Special Victims Squad Staten Island.
- **New York County District Attorney's Office Squad.**
- **Department of Investigation Squad.**

Definitions

- a. **Suspect** - A person police believe to have committed the crime.
- b. **Filler** - A person who is in the lineup, but is not a suspect in the crime.
- c. **Lineup** - A collection of individuals, either sitting or standing in a row, who are shown to a witness to determine if the witness can recognize a person involved with the crime.
- d. **Lineup Members** - The people who make up the lineup; both the suspect and the fillers.
- e. **Lineup Room** - Room where the fillers and suspect are arranged for viewing by the witness.
- f. **Viewing Room** - Room from which the witness, the administrator, Detective Bureau supervisor, on some occasions the defense attorney and other required personnel (e.g., interpreter) view the lineup.
- g. **Security Officer** - The person monitoring the fillers and the suspect in the lineup room.
- h. **Administrator of the Lineup** - The person who is conducting the lineup identification procedure.
- i. **Detective Bureau Supervisor** - A Detective Bureau sergeant or lieutenant who will supervise the identification procedure.

Procedure

When a lineup will be conducted, comply with the following procedure:

Investigator

1. Notify a Detective Bureau supervisor that a lineup must be conducted.
2. If the lineup involves a suspect who is less than sixteen (16) years old:
 - a. Notify the Dispatcher assigned to the Detective Borough where the lineup is conducted and obtain a "Juvenile Lineup Serial Number".
 - b. Enter the "Juvenile Lineup Serial Number" on the **Lineup Information Report (PD 373-151 (Rev. 10-11))**.

Detective Bureau Supervisor

3. Determine whether a lineup should be conducted.
4. When a lineup will be conducted, personally supervise entire lineup procedure to ensure it is properly conducted.

Administrator of the Lineup

5. When necessary, notify Operations Unit, provide specific information regarding the involved language(s) and dialect(s), indicate the required type of language service (i.e., speaking, reading, writing) and request the immediate response of one (1) or more NYPD interpreters.
6. Contact the witness to view the lineup and state the following: *"We would like you to come in to view a lineup in connection with the crime you witnessed on (date and location)."*
 - a. Do not provide an opinion regarding the witness' ability to make an identification.
 - b. Unless the witness specifically asks if someone is in custody, the witness should not be informed that an arrest has been made and the police have a suspect that he / she will be viewing.
 - c. Do not say, "We have someone we believe may be involved with the crime and we need you to see if you recognize him / her."
7. Conduct the lineup at an appropriate police facility.
8. When necessary, transport one (1) or more witnesses to the facility where the lineup will be conducted.
9. If there are multiple witnesses separately viewing one (1) or more lineups:
 - a. Instruct the witnesses before and after the lineup not to speak to each other regarding the identification procedure.
 - b. Implement reasonable and practical measures before and after the lineup to prevent the witnesses from speaking to each other regarding the identification procedure.
10. Remove all items that could influence the witness' identification (e.g., evidence regarding the case, wanted poster, photo of the suspect, sketch, suspect's criminal history report) from the viewing room and lineup room.
11. **To ensure the correct forms are used**, access the Enterprise Case Management System (ECMS) and print all required lineup identification procedure forms. In order to obtain the correct lineup identification procedure forms from ECMS, select:

- a. "Help" on the Navigational Tool Bar; and,
 - b. "User Manuals" and,
 - c. "2011" submenu folder; and,
 - d. "2011_CODET_Memos" submenu folder; and,
 - e. "31-CODETMemo31-2011LineupPilot11-7-2011.pdf" folder.
12. Implement all necessary procedures to ensure the safety and security of all persons involved in the lineup procedure (e.g., law enforcement officers, defense attorney, prosecutor, lineup members, witnesses).
 13. Only one suspect will be viewed in each lineup.
 14. Each lineup should be comprised of five (5) fillers and one (1) suspect. If it is not possible to use five (5) fillers, notify:
 - a. Involved Detective Bureau supervisor; and,
 - b. Zone Commanding Officer or, if applicable, Detective Bureau Duty Captain.
 15. If there are multiple suspects:
 - a. Conduct a separate lineup for each suspect.
 - b. Use five (5) different fillers in each separate lineup.
 16. When choosing fillers consider the following:
 - a. Fillers will be similar in appearance to the suspect. Similarities should include gender, facial hair, race, age, skin color, height, extraordinary physical features, etc.
 - b. When possible, the clothing of the fillers should be similar to each other and the clothing of the suspect. However, if the clothing of the fillers and the suspect are not similar:
 - i. If practical, provide the fillers and suspect with similar clothing; or,
 - ii. Cover the clothing of the fillers and the suspect so as to prevent the witness from viewing the clothing.
 - c. Fillers must not be known to the witness.
 - d. Fillers must not be friends of or related to the suspect.
 - e. Fillers from a photo array previously viewed by the witness will not be used as fillers in the lineup.
 - f. If a person under eighteen (18) years of age is used as a filler:
 - i. Prior to the lineup, obtain consent from the filler's parent or legal guardian to have the filler participate in the lineup; and, have the filler's parent or legal guardian sign the appropriate English or Spanish language section of **Consent Form - Non-Suspect Minor (PD 377-030 (7-98)-Pent)**.
 - ii. Institute measures to isolate the fillers from harmful influences in the area of the lineup.
 - iii. If available, have precinct Youth Officer present during the lineup procedure(s).
 17. If necessary, all members of the lineup should be seated to eliminate any extreme variations in height.
 18. Prior to conducting the lineup, allow suspect to choose his / her own numerical position in the lineup.
 - a. If there was an identification based on a photo array prior to the lineup, the suspect should not be placed in the same numerical position in the lineup as he /

- she appeared in the photo array unless the suspect insists on that numerical position.
- b. If there is more than one (1) witness viewing a lineup involving the same suspect, allow the suspect to choose his / her numerical position in each lineup.
19. Confer with a Legal Bureau attorney if suspect:
 - a. Refuses to participate in the lineup identification procedure; or,
 - b. Will not comply with directions regarding the lineup identification procedure.
 20. Comply with reasonable requests made by the suspect's attorney regarding the lineup identification procedure.
 21. Comply with a suspect's attorney's request to view the fillers.
 22. Absent unusual circumstances, do not permit a suspect's attorney to view the lineup procedure in the lineup room.
 23. Absent extraordinary circumstances, comply with a suspect's attorney's request to view the lineup procedure in the viewing room.
 - a. If extraordinary circumstances exist and a suspect's attorney's request to view the lineup procedure in the viewing room must be denied, then authorization must be obtained from the involved Detective Bureau supervisor and a Legal Bureau attorney and, if applicable after conferring with the Legal Bureau attorney, the involved Assistant District Attorney or Assistant Corporation Counsel.
 24. Instruct the suspect's attorney not to speak in the viewing room when the witness is present.
 25. Prepare the **Lineup Defense Counsel Report (PD 373-153 (Rev. 10-11))** to document whether the suspect's attorney was present during the lineup, whether there were any requests made by the suspect's attorney, whether the suspect's attorney's requests were granted or denied and, if applicable, the reason for denying one (1) or more requests made by the suspect's attorney.
 26. All lineup members must be instructed:
 - a. Not to speak with each other.
 - b. Not to make unnecessary gestures.
 - c. To remain motionless and look forward unless directed to do otherwise by the security officer.
 - d. To hold numbered cards in the lineup room if there are no numbers painted on the wall of the lineup room.
 27. Take a photograph of the lineup.
 - a. If there is more than one (1) witness viewing a lineup involving the same suspect, take a photograph of each lineup.
 28. Prior to conducting lineup, read the instructions verbatim from the English language **Lineup Instructions to Witness Report (PD 373-111 (Rev. 10-11))** or, if applicable, Spanish language **Lineup Instructions to Witness Report – Spanish (PD 373-111A (Rev. 10-11))** to the witness.
 29. If the witness has difficulty understanding the instructions on the **Lineup Instructions to Witness Report**, explain the instructions in a simplified manner.
 30. Request witness to initial and date **Lineup Instructions to Witness Report** in the appropriate captions of the "WITNESS INITIAL" box.
 - a. If witness refuses, write "Refused" and the rank, name, and tax registry number

of the administrator of the lineup in the "WITNESS INITIAL" box.

31. Before the witness views the lineup, read the "Instructions to the Administrator When Entering the Viewing Room" information on Part A of the English language **Lineup Administration Report (PD 373-152 (Rev. 10-11))** or, if applicable, Spanish language **Lineup Administration Report – Spanish (PD 373-152A (Rev. 10-11))**.
32. When appropriate, implement reasonable procedures to protect the confidentiality and prevent the disclosure of the identity of one (1) or more witnesses. When necessary, notify:
 - a. The involved Detective Bureau supervisor.
 - b. A Legal Bureau attorney and request assistance.
 - c. If applicable after conferring with a Legal Bureau attorney, the involved Assistant District Attorney or Assistant Corporation Counsel.
33. Enter the viewing room with the Detective Bureau supervisor and, if applicable, have other non-witness personnel enter the viewing room (e.g., suspect's attorney, interpreter).
34. Have the witness escorted into the viewing room by a uniformed member of the service in a manner that will not influence the witness' identification.
35. Stand in a neutral manner, out of the witness' line of sight and in a position where it will be possible to observe the witness viewing the lineup and listen to the witness during the viewing of the lineup.
 - a. Do not take a position that will interrupt the concentration of the witness or "crowd" the witness.
36. Inform witness to take whatever time is necessary to view the lineup.
37. Permit the witness to view the lineup.
38. During the viewing of the lineup by the witness, remain neutral and do not make comments that may potentially focus a witness' attention to a particular lineup member more than the others (e.g., "Are you sure you got a good look at number 2?" or "Can you take another look at number 6?").
39. If a witness seeks guidance about whom to pick in the lineup, instruct the witness to focus on the lineup.
40. When appropriate, inform the witness:
 - a. He / she may request that the lineup members speak, move, change clothing or perform any other action reasonably related to the involved crime.
 - b. If one (1) or more lineup members are required to speak, move, change clothing or perform any other action reasonably related to the involved crime, then all lineup members must do so starting from the first numerical position and proceeding sequentially to the last numerical position.
41. If at the request of the witness, one (1) or more lineup members must speak, move, change clothing or perform any other action reasonably related to the involved crime, direct the security officer to instruct all lineup members to perform the required actions starting from the first numerical position and proceeding sequentially to the last numerical position.
 - a. Do not use force to compel a lineup member to speak, move, change clothing or perform any action.
 - b. If a lineup member refuses to speak, move, change clothing or perform any action:



- i. Notify the involved Detective Bureau supervisor.
 - ii. Notify a Legal Bureau attorney and request assistance.
42. If a witness' request regarding the lineup members is not feasible and can not be accommodated, inform the witness the request must be denied and provide an explanation.
43. Document on a "Lineup" DD-5 all actions that lineup members are asked to perform, actually perform, can not perform and refuse to perform.
44. Ensure the security officer is not observed by the witness. However, if there are unusual circumstances or if the witness requests that a lineup member speak, move, change clothing or perform any other action reasonably related to the involved crime, the security officer in the lineup room may be observed by the witness.
45. When the witness indicates the viewing of the lineup is completed:
 - a. Ask the witness the following three questions verbatim:
 - i. Did you recognize anyone in the lineup?
 - ii. If so, what is the number of the person that you recognize?
 - iii. From where do you recognize that person?
 - b. If the witness' answers are vague or unclear, ask the witness one (1) or more "clarifying questions" to determine what the witness meant by the answer. For example, if the witness states "I think it is # 3.", then the administrator should say: "You said I think it is # 3. What do you mean by that?"
 - c. Do not ask the witness to provide a numeric value involving the level of certainty regarding an identification or non-identification (e.g., "On a scale of 1 – 10, how sure are you?" or "Are you 100% sure?").
46. Document verbatim the responses of the witness to the three questions and all clarifying questions and any related words of the witness and any related gestures of the witness on Part B of the **Lineup Administration Report**.
 - a. Statements made by the witness must be documented verbatim (e.g., "It is definitely # 1." or "If I had to pick, it would be # 2." or "I'm not sure, but it might be # 3." or "I didn't want to say inside the room, but it was # 4.").
 - b. Document physical reactions and gestures of the witness.
 - c. DO NOT use the following statements when documenting the results of the viewing of the lineup: "positive," "negative," "hit," or "no hit."
47. Complete the "Date" and "Time" captions of Part B of the **Lineup Administration Report**.
48. Request witness to sign **Lineup Administration Report**.
 - a. If witness refuses, write "REFUSED" and the rank, name, and tax registry number of the administrator of the lineup on the signature line.
49. Request the witness to initial the front of the photograph of the lineup to verify that it is the lineup that he / she viewed.
50. When a filler is under eighteen (18) years of age, ensure:
 - a. The photograph of the lineup is not used for any purpose other than to document the lineup (e.g., do not use as a photo lineup in an unrelated investigation, do not use in a photographic identification procedure in an unrelated investigation, do not retain for use as intelligence).
 - b. No prints or copies of the photograph of the lineup are produced for any purpose

- other than to document the lineup.
51. Instruct witness using the following statement verbatim *“Do not discuss with any other witness what you observed or said during this identification procedure.”*
 52. DO NOT inform the witness of the results of the lineup.
 53. DO NOT inform the witness whether another witness did or did not make an identification.
 54. DO NOT inform the witness of future steps until the identification procedure is documented on Part B of the **Lineup Administration Report**.
 55. After completing the **Lineup Administration Report**, discuss with the witness the next steps in the investigation. For example, the witness might be told, “We will contact you about meeting with the Assistant District Attorney.” or “We will contact you about any additional developments regarding the investigation.”
 - a. Remain neutral and do not comment or react to the results of the identification procedure.
 - b. If the witness has questions regarding the case, accurately answer the questions including whether an arrest will be made.
 56. If there are multiple witnesses separately viewing one (1) or more lineups, in addition to providing the instructions to the witnesses that are listed in step 51 of this procedure, also implement reasonable and practical measures before and after the lineup to prevent the witnesses from speaking to each other regarding the identification procedure while in the police facility. For example:
 - a. Place each witness in a separate room.
 - b. Direct an officer to sit with the witnesses.
 - c. When applicable, allow the witnesses to leave immediately after the identification procedure.
 - d. If the witnesses must be interviewed after the identification procedure, place each witness in separate area.
 57. Prepare **Lineup Information Report** and document the identity of all persons present in the viewing room and the lineup room.
 58. Prepare a separate “Lineup” DD-5 for:
 - a. **Each** witness who viewed the lineup (e.g., if there are two (2) witnesses and one (1) suspect lineup: two (2) separate Lineup DD-5s must be prepared).
 - b. **Each** lineup viewed by a witness (e.g., if one (1) witness is viewing three (3) suspect lineups: three (3) Lineup DD-5s must be prepared).
 59. Upload the following documents as attachments to the Enterprise Case Management System (ECMS) case folder:
 - a. **Lineup Information Report.**
 - b. **Lineup Defense Counsel Report.**
 - c. **Lineup Instructions to Witness Report.**
 - d. **Lineup Administration Report.**
 - e. If applicable, **Consent Form - Non-Suspect Minor.**
 - f. Photograph of the lineup.
 60. Attach the original **Lineup Information Report, Lineup Defense Counsel Report, Lineup Instructions to Witness Report, Lineup Administration Report**, and if applicable, **Consent Form - Non-Suspect Minor** to the photograph of the lineup without damaging, altering, modifying, etc., the photograph of the lineup.

61. Retain and safeguard the original documents listed in step 60 of this procedure and the original photograph of the lineup(s) in the related paper case folder.

For your information and compliance.

Phil T. Pulaski
Chief of Detectives

	<h2 style="margin: 0;">CHIEF OF DETECTIVES MEMO</h2>	
NUMBER: 17	DATE: June 21, 2010	

Subject: **COLLECTING DNA EXEMPLAR ABANDONMENT SUSPECT
SAMPLES IN A NON-CONTROLLED ENVIRONMENT**

When collecting a DNA Exemplar Abandonment Suspect Sample from a suspect in a non-controlled environment:

Investigator

1. Prior to collecting a DNA Exemplar Abandonment Suspect Sample from a suspect in a non-controlled environment, properly mark the paper container / package or Biological Evidence Bag (BEB) that will be used to package the collected sample.
 - a. Mark the paper container / package in the following manner:
 - i. Legibly print your name in BLOCK letters.
 - ii. Legibly print an accurate description of the object that constitutes the DNA Exemplar Abandonment Suspect Sample (e.g., cigarette, cup, can, plastic bottle, chewing gum).
 - iii. Legibly print the corresponding PROPERTY CLERK INVOICE (INVOICE) number.
 - iv. Legibly print the corresponding INVOICE item number.
 - v. Legibly print the command where the DNA Exemplar Abandonment Suspect Sample was vouchered.
 - vi. Legibly print the date when the DNA Exemplar Abandonment Suspect Sample was vouchered.
 - vii. Legibly print all of the associated OMNIFORM COMPLAINT REPORT numbers.
 - viii. Legibly print all of the associated OMNIFORM ARREST REPORT numbers, if applicable.
 - b. If a BEB is utilized, ensure there is an entry in each caption on each BEB.
2. Surveil the suspect in order to observe the suspect discard:
 - a. An object that has been partially consumed (e.g., cigarette, chewing gum, apple); or,
 - b. A container from which the suspect was drinking a beverage (e.g., water in a plastic cup, soda in a can, coffee in a styrofoam cup, juice in a plastic bottle).
3. **ALWAYS** keep the suspect under observation **and** observe the suspect discard the DNA Exemplar Abandonment Suspect Sample **and** observe the DNA Exemplar Abandonment Suspect Sample until it is collected.

- a. Unbroken eye contact should be maintained with the DNA Exemplar Abandonment Suspect Sample until it is collected.
4. Don one (1) pair of new, unused, clean disposable latex gloves.
5. Carefully collect the DNA Exemplar Abandonment Suspect Sample.
 - a. When collecting a plastic drinking container with a beverage therein, create a small hole in the lower portion of the bottle and allow the beverage to drain out.
 - b. When collecting a container with a resealable or replaceable cover, cap, lid, etc., DO NOT reseal or replace the removed cover, cap, lid, etc.
 - c. When collecting a glass container with a beverage therein, slowly and carefully pour the beverage out of the glass container.
6. Place the DNA Exemplar Abandonment Suspect Sample into the marked paper container / package or BEB.
7. Properly seal the marked paper container / package or BEB with **Evidence Tape**.
 - a. Do not use staples and do not use scotch tape, masking tape, electrical tape or any other type of tape other than Evidence Tape.
8. Use a permanent ink marker (i.e., Sharpie) to legibly sign name across the border between the Evidence Tape and the marked paper container / package or BEB.
9. Voucher one (1) or more DNA Exemplar Abandonment Suspect Samples collected from the same one (1) suspect on one (1) INVOICE.
 - a. DNA Exemplar Abandonment Suspect Samples collected from two (2) or more different suspects must **NOT** be vouchered on one (1) INVOICE.
10. List **each** DNA Exemplar Abandonment Suspect Sample as a separate **item** on a separate line on the INVOICE; and, give **each** DNA Exemplar Abandonment Suspect Sample a separate **item** number.
 - a. In the “*ARTICLE*” caption of the INVOICE write:
 - i. “DNA Exemplar Abandonment Suspect Sample”; and,
 - ii. The name and, if known, the date of birth and, if applicable and known, the NYSID number of the person who provided the DNA Exemplar Abandonment Suspect Sample.
 - iii. Describe the markings placed on the DNA Exemplar Abandonment Suspect Sample container by the collecting officer (i.e., name of the collecting officer and consecutive number).
 - b. Use as many lines on the INVOICE as necessary to ensure that **each** DNA Exemplar Abandonment Suspect Sample that is documented as a separate **item** on a separate line on the INVOICE and is given a separate **item** number, is accurately and legibly described on the INVOICE in conformance with step 10 a.
11. Correctly cross reference **ALL** associated / related INVOICES by entering **ALL** of the associated / related INVOICE numbers in the “*Additional Invoice Nos. Related To This Case Including Motor Vehicles*” caption on **each** of the associated / related INVOICES.
 - a. If there is insufficient space in the “*Additional Invoice Nos. Related To This Case Including Motor Vehicles*” caption on the INVOICE, then enter **ALL** of the associated / related INVOICE numbers in the “*Remarks*” section of **each** of the associated / related INVOICES.

12. Prepare a REQUEST FOR LABORATORY EXAMINATION REPORT – FIRST SHEET and a REQUEST FOR LABORATORY EXAMINATION REPORT – SECOND SHEET and, if necessary, a REQUEST FOR LABORATORY EXAMINATION REPORT – THIRD SHEET for each INVOICE that lists one (1) or more DNA Exemplar Abandonment Suspect Samples.
 - a. Ensure all of the required information is legibly and accurately printed in the “*Details*” section on each REQUEST FOR LABORATORY EXAMINATION REPORT – FIRST SHEET. In particular, describe the:
 - i. Facts of the case.
 - ii. Relationship and connection between the DNA Exemplar Abandonment Suspect Sample and other related DNA / biological evidence and forensic evidence and investigative evidence and digital / multimedia evidence.
 - b. Ensure all of the applicable “Suspect” information is legibly and accurately entered in the appropriate captions on each REQUEST FOR LABORATORY EXAMINATION REPORT – FIRST SHEET.
13. Prepare one (1) or more EVIDENCE TRANSMITTAL REPORTs in compliance with the appropriate Department procedures.
14. Obtain a photocopy of ALL of the associated COMPLAINT REPORTs.
 - a. Obtain photocopy of ALL of the associated OMNIFORM COMPLAINT REPORTs if available.
 - b. Obtain photocopy of ALL of the associated handwritten COMPLAINT REPORTs if the corresponding OMNIFORM COMPLAINT REPORT is not available.
15. Attach each correct corresponding photocopy of the COMPLAINT REPORT(s) and each correct corresponding INVOICE and each correct corresponding EVIDENCE TRANSMITTAL REPORT and each correct corresponding REQUEST FOR LABORATORY EXAMINATION REPORT – FIRST / SECOND / THIRD SHEETs to the DNA Exemplar Abandonment Suspect Sample paper container / package or BEB.

For your information and compliance.

Phil T. Pulaski
Chief of Detectives